

REMARKS

The above amendments to the claims are entered in response to the office action of April 11, 2003. The amendments and the relation of the amended claims to the prior art rejection will be discussed in detail below.

A new sheet with the Abstract is attached to this response. The Abstract is based on the Abstract in the published PCT application.

The Examiner has also raised a question about the absence of a declaration in the Office file. Attached is a photocopy of the Declaration as submitted with the original application papers, along with our postcard receipt bearing the date-stamp of the PTO mailroom. Entry of the Declaration in the file is respectfully requested. No fees are deemed to be due in connection with this submission.

Claims Under Examination

This national phase of the PTC application was subject to a Preliminary Amendment in which claims 4-20 were cancelled because they included multiple-dependencies and other usages that did not comply with U.S. claim practice. These claims were rewritten as new claims 21-32 in the Preliminary Amendment. Claim 3 remained in the application as originally filed.

We note that the office action indicates that only claims 1, 2 and 21-32 were examined. We assume that the apparent omission of claim 3 from the office action may have been inadvertent or the result of a typographical error, since claim 3 merely includes a limitation of a preferred feature that was known to the prior art. We respectfully request that this issue be reviewed and clarified in the file and in the next office action.

**The Claims as Amended Obviate the Section 112
and the Section 102 Rejections**

Claims 1, 2, 3 and 21-32 have been rewritten and are entered as new claims 33-57. New claim 33 corresponds to the embodiment of Figs. 1 and 2 having a single handle, claims 48-57 being dependent therefrom; independent claim 34 corresponds to the device of Figs. 3 and 4 having two handles, claims 35-46 being dependent therefrom.

The objections under Section 112 have been obviated by the reference to first and second jaw members, gripping portions, leverage portions and the like. We believe that this change in terminology is clarifying and, of course, conforms to the drawings. No new matter is entered by these clarifying amendments which better define the elements and their relationship. Applicant expresses his thanks to the Examiner for bringing these matters to our attention.

We also submit that the amendments to independent claims 33 and 34 now clearly distinguish the structural elements and their operating relationships from the cited USP 2,537,838 to Logan (the '838 patent). In particular, we note that the connector of the present invention as defined by the amended claims serves to hold the first and second jaw members in opposed disposition, whereas the connector of the '838 patent urges the jaw members apart. This is a significant difference and one which has not been shown to be taught or even suggested by the single reference relied upon. This structure is, of course, apparent from the written description of the invention in the specification and is quite clearly illustrated in the figures. On this ground alone, we respectfully submit that the '838 patent cannot stand as an anticipatory reference under Section 102 for the claims as amended.

We also note that the analysis of the '838 patent in the office action refers to the connecting means as element 20 in Figs. 1, 2 and 3 of that patent, whereas, that so-called "connector" is, in fact, a helical spring that abuts the extension of the handle and urges the lower part of the jaw member and handle away from each other. This mechanical arrangement and functioning bears no relation to the "connector" shown as element 25 in Figs. 1 and 2 of the present invention, which connects the two jaw members together, and performs a similar (though not identical) function to the prior art pivot 18 in Figs. 1, 2 and 3 of the '838 patent.

A further difference between the present invention and that of the '838 patent is that the two jaw members are pivotally connected to one another by the pivot 18 so that the jaw members pivot about a fixed pivot axis with respect to each other, whereas the pivotal motion between the jaw members of the present invention is adjustable in its relationship between the two jaw members by virtue of the connector having an adjustable length feature.

It is also to be noted that the wrench of the '838 patent has a single handle, while the second principal embodiment of new independent claim 34 has two handles. We respectfully submit that the cited reference cannot properly be applied to new claim 34, since the disclosure of the '838 patent is wholly lacking in any teaching or suggestion that would render such a significant structural change obvious to one of ordinary skill in the art.

Allowable Subject Matter

We note that the Examiner had indicated that claims 21-32 of the preliminary amendment are allowable, subject to being rewritten to include the limitations of the claims from which they depended as well as obviating the Section 112 objections. As noted above, we believe that the


revised formatting of new claims 33 and 34, corresponding to original claims 1 and 2, eliminates the basis for the Section 112 rejection. Furthermore, we have shown that any *prima facie* case that may have been established in the analysis of the '838 patent has been overcome by the clarifying amendments to the claim terminology and the demonstration that the structural elements and functioning are so different as to negate any assertion of anticipation under Section 102.

Conclusion

The above amendments to the claims have addressed all issues raised in the outstanding office action and the formal requirements have been met by the submission of the Abstract. The application is now believed to be in condition for allowance and prompt issuance of a notice to that effect is respectfully requested.

Respectfully submitted,

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